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16 **UNITED STATES BANKRUPTCY COURT**
17 **FOR THE SOUTHERN DISTRICT OF CALIFORNIA – SAN DIEGO DIVISION**

18 **In re**

Case No. 20-05522-CL11

19 **Ramin Pourteymour,**

Chapter 11

20 **Debtor/Debtor-In-Possession.**

**SENIOR SECURED CREDITOR FIRST
FOUNDATION BANK'S MOTION FOR ORDER
RE: COMPEL DEBTOR TO AUTHORIZE FFB'S
CONSTRUCTION EXPERT TO ENTER AND
INSPECT FFB'S REAL PROPERTY
COLLATERAL RE: 9805 BLACK GOLD, LA
JOLLA (SAN DIEGO), CALIFORNIA**

21 **Hearing:**

22 **Date: March 1, 2021**

23 **Time: 2:00 p.m.**

24 **Ctrm: 5, Room 318**

U.S. Bankruptcy Court

325 West F Street

San Diego, CA 92101

(via Telephonic)

1 **TO THE HONORABLE CHRISTOPHER B. LATHAM, U.S. BANKRUPTCY JUDGE;**
 2 **THE DEBTOR/DEBTOR-IN-POSSESSION AND HIS COUNSEL OF RECORD; THE SAN**
 3 **DIEGO OFFICE OF THE U.S. TRUSTEE; AND OTHER PARTIES ENTITLED TO NOTICE:**

4 Senior Secured Creditor, First Foundation Bank (“FFB” or “Bank”) submits the following
 5 *Motion for Order re: Compel Debtor to Allow Access and Inspection for FFB’ Construction*
 6 *Expert re: Residential Real Estate Located at 9805 Black Gold Road, La Jolla (San Diego),*
 7 *California 92037 (“Black Gold Property”).* Specifically, as detailed herein and consistent with
 8 FRCP 34, incorporated herein by Rule 7034 of the Federal Rules of Bankruptcy Procedure,
 9 FFB through its counsel, has requested informally of the Debtor, through his counsel, that
 10 FFB’s proposed Construction Expert be allowed access and the ability to inspect the Debtor’s
 11 Black Gold Property concerning possible construction defects as concluded by the Debtor’s
 12 Construction Expert (See, ECF No. 14, Declaration of Antonio Hernandez). The Debtor’s
 13 Construction Expert’s conclusion of purported needed repairs totaling \$765,000 for the Black
 14 Gold Property appears directly in conflict with the Debtor’s recent Section 341(a) Meeting
 15 testimony that the Debtor spent “. . . millions of dollars remodeling the Black Gold Property
 16 from 2008 through 2016. . .”.

17 Consequently, it is imperative that the Bank’s proposed Construction Expert, Kory
 18 Kruckenberg, be allowed access to inspect the purported disrepairs as concluded by the
 19 Debtor’s Construction Expert. Furthermore, the Bank’s Real Estate Appraiser, Frank D. Real
 20 also needs the Bank’s Construction Expert’s opinion about the purported repairs of \$765,000
 21 as concluded by the Debtor’s Construction Expert. (Declaration of Frank D. Real filed and
 22 served concurrently herewith)

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1 Finally, pursuant to Local Bankruptcy Rule 7026-2, counsel for both the Bank and the
2 Debtor exchanged emails as to their client's respective positions, and despite both Parties'
3 good faith, the Bank's Construction Expert has been precluded from access to and inspection
4 of the Debtor's Black Gold Property. The Certificate of Compliance re: LBR 7026-3 is being
5 filed and served concurrently herewith.

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8 **Dated: January 29, 2021**

POLIS & ASSOCIATES, APLC

9
10 **By: /s/ Thomas J. Polis**
11 **Thomas J. Polis, Esq.**
12 **Counsel for Senior Secured Creditor,**
13 **First Foundation Bank**

14 **Dated: January 29, 2021**

GREEN, STEEL & ALBRECHT, LLP

15
16 **By: /s/ Scott R. Albrecht**
17 **Scott R. Albrecht, Esq.**
18 **Counsel for Senior Secured Creditor,**
19 **First Foundation Bank**

I.

INTRODUCTORY STATEMENT RE: BANK'S MOTION TO COMPEL INSPECTION OF
PROPERTY RE: DEBTOR'S BLACK GOLD PROPERTY

As detailed herein, despite the Bank's good faith requests to allow its Construction Expert to inspect the Debtor's Black Gold Property, the Debtor has prevented such inspection. The Bank's counsel has shown that the Debtor would not be prejudiced by allowing its Construction Expert to briefly (no more than 1-2 hours) walk-through the interior of the Black Gold property, yet those efforts have been prevented. Even more compelling, the Debtor testified on January 26, 2021 during his continued 341(a) hearing that ". . .millions of dollars were spent on substantial remodeling for the Black Gold Property between 2008 and 2016. . .", yet the Debtor's Construction Expert has conversely testified that the Black Gold Property needs \$765,000 in repairs. This stark difference of the true state of the Bank's Collateral (the Black Gold Property) needs to be inspected by the Bank's Construction Expert. Finally, in compliance with LBRs 7026-2 and 7026-3, both the Bank and the Debtor, through their counsel, have conducted the "Meet and Confer" requirements of LBR 7026-2, and the Certificate of Compliance pursuant to LBR 7026-3 is filed and served concurrently herewith.

II.

FACTUAL SUMMARY RE: BANK'S MOTION TO COMPEL INSPECTION
OF DEBTOR'S BLACK GOLD PROPERTY

1. On November 6, 2020, the Debtor, Ramin Pourteymour ("Debtor") filed the above-captioned Chapter 11 bankruptcy case. At all times the Debtor has maintained his status as a Debtor-in-Possession for the above-captioned case.

2. Included with the Debtor's real estate assets is the residential real property located at 9805 Black Gold, La Jolla (San Diego), California 92037 ("Black Gold Property"). The Black Gold Property is encumbered by various deeds of trust, including but without limitation, the first priority senior deed of trust in favor of Movant, First Foundation Bank ("Bank" or "FFB") in the amount of \$4,572,080.51. Also, Movant, FFB holds the second priority

1 deed of trust encumbering the Black Gold Property securing a debt to FFB in the approximate
2 amount of \$3,080,478.33.

3 3. On December 14, 2020, the Court conducted the initial hearing on the Debtor's
4 *Valuation/Lien Stripping Motion re: FFB's Liens Securing the Black Gold Property*. At the
5 conclusion of the December 14, 2020 Hearing, the Court set a continued Status Conference
6 Hearing for February 1, 2021 to allow the Debtor and FFB to work-out any discovery issues
7 re: valuation/appraisal issues.

8 4. Soon after the Christmas/New Year's Holidays, FFB proposed to the Debtor,
9 conduct a walk-through inspection of the Black Gold Property during the third or fourth week
10 of January 2021. Thus, on January 13, 2021, FFB proposed to Debtor's counsel that in
11 addition to FFB's Real Estate Appraiser, that the walk-through inspection also include FFB's
12 Construction Expert, Kory Kruckenberg. Since the walk-through was agreed to in principle, it
13 did not appear there would be any prejudice to the Debtor to allow FFB have its Construction
14 Expert accompany the FFB's Real Estate Appraiser.

15 5. Later on, January 13 and 14, 2021, Debtor's and FFB's counsels exchanged
16 emails whereby the Debtor's counsel concluded, that FFB's Construction Expert would not be
17 allowed to participate in the January 21, 2021 agreed walk-through inspection since a prior
18 declaration had not been submitted by FFB's Construction Expert in regards to the Debtor's
19 *Valuation Motion*. Furthermore, FFB's position was that allowing its Construction Expert to
20 participate in the agreed January 21, 2021 walk-through inspection would be of absolutely no
21 prejudicial effect to the Debtor. Until the January 21, 2021 walk-through inspection was
22 agreed to, FFB did not have access to the interior of the Black Gold Property to allow either
23 its Real Estate Appraiser and/or its Construction Expert to inspect the Black Gold Property.

24 6. Between January 15, 2021 and January 23, 2021, counsels for the Debtor and
25 FFB conducted their "Meet and Confer" efforts as required by Local Bankruptcy Rule 7026-2.
26 Despite all counsels' best efforts and apparent good faith, FFB's Construction Expert has still
27 been prevented from inspecting the Black Gold Property.

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7. On January 26, 2021, the Debtor appeared for his continued 341(a) hearing (via telephonic appearance). During the January 26, 2021 341(a) Hearing the Debtor testified that between 2008 and 2016 he “. . .spent millions of dollars remodeling the Black Gold Property.” (A copy of the Debtor’s 341(a) Transcript is being ordered and will be presented to the Court when obtained). However, this testimony appears to be directly contradictory to the Debtor’s Construction Expert, who opined that the Black Gold Property is in need of repairs totaling \$765,000. Thus, illustrating the critical need to allow FFB’s Construction Expert to gain access to the interior of the Black Gold Property.

III.

POINTS AND AUTHORITIES RE: FFB’S MOTION TO COMPEL

INSPECTION OF BLACK GOLD PROPERTY

A. FRCP 341/FRBP 7034 EXPRESSLY ALLOWS FOR THE INSPECTION OF LAND IF RELEVANT TO THE CASE

Rule 7034 of the Federal Rules of Bankruptcy Procedure provides:

Rule 34 F.R.Civ.P. applies in adversary proceedings.

Rule 9014 of the Federal Rules of Bankruptcy Procedure provides in part:

Rule 9014. Contested Matters.

(c) Application of Part VII Rules.

Except as otherwise provided in this rule, . . .the following rules shall apply: 7028 – 7037.

Finally, F.R.Civ.P. Rule 34 provides:

(a) In general. A party may serve on any other party a request within the scope of Rule 26(b):. . .

(2) to permit entry onto designated land or other property possessed or controlled by the responding party, so that the responding party may inspect, measure, survey, photograph test or sample the property or any designated object or operation on it. (Emphasis added.)

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1 **B. FFB'S CONSTRUCTION EXPERT SHOULD BE ALLOWED INTERIOR ACCESS TO**
2 **THE DEBTOR'S BLACK GOLD PROPERTY SINCE THERE'S BEEN NO SHOWING**
3 **OF PREJUDICE TO THE DEBTOR**

4 As part of the "Meet and Confer" process conducted between the Bank and the Debtor,
5 the Debtor's counsel has not made any showing of prejudice by allowing the Bank's
6 Construction Expert to inspect the interior of the Black Gold Property. The only apparent
7 reason the Debtor has asserted preventing the Bank's Construction Expert from participating
8 in the January 21, 2021 walk-through was that there was no prior declaration filed by the
9 Bank's Construction Expert. The issue with that reasoning is a bit confusing since the Bank's
10 Construction Expert would have nothing to declare about the status of the Black Gold Property
11 until he was allowed access to the Property.

12 Finally, as noted in the Introductory paragraphs herein, the Debtor testified during his
13 recent continued Section 341(a) hearing on January 26, 2021 that essentially, he (Debtor)
14 spent "...millions of dollars remodeling the Black Gold Property between 2008 and 2016. . .",
15 yet now the Debtor's Black Gold Property needs \$765,000 in repairs. This stark contrast
16 needs to be flushed out and FFB can only get a true answer after its Construction Expert is
17 able to inspect the interior of the Black Gold Property.

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IV.

CONCLUSION

Movant, Senior Secured Creditor First Foundation Bank, respectfully requests that the Court grant its Inspection Motion and allow FFB's Construction Expert to inspect the exterior and interior of the Debtor's Black Gold Property. The Debtor has not shown any specific prejudice that dictates not allowing such an important fact-finding endeavor to be allowed.

Dated: January 29, 2021

POLIS & ASSOCIATES, APLC

By: /s/ Thomas J. Polis
Thomas J. Polis, Esq.
Counsel for Senior Secured Creditor,
First Foundation Bank

Dated: January 29, 2021

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